UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

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No. 02-7395

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UNITED STATES OF AMERICA,

                              Plaintiff - Appellee,

     versus

UNDER SEAL,

                              Defendant - Appellant.

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Appeal from the United States District Court for the Eastern District of Virginia, at Richmond. Robert E. Payne, District Judge. (CR-96-66)

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Submitted: March 6, 2003   Decided: March 13, 2003

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Before WILKINSON, MICHAEL, and KING, Circuit Judges.

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Dismissed by unpublished per curiam opinion.

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Under Seal, Appellant Pro Se. Stephen Wiley Miller, OFFICE OF THE UNITED STATES ATTORNEY, Richmond, Virginia, for Appellee.

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PER CURIAM:

Appellant seeks to appeal the district court's order dismissing as untimely filed his motion under 28 U.S.C. § 2255 (2000). An appeal may not be taken from the final order in a § 2255 proceeding unless a circuit justice or judge issues a certificate of appealability. 28 U.S.C. § 2253(c)(1) (2000). When, as here, a district court dismisses a § 2255 motion solely on procedural grounds, a certificate of appealability will not issue unless the movant can demonstrate both "(1) 'that jurists of reason would find it debatable whether the motion states a valid claim of the denial of a constitutional right' and (2) 'that jurists of reason would find it debatable whether the district court was correct in its procedural ruling.'" Rose v. Lee, 252 F. 3d 676, 684 (4th Cir.) (quoting Slack v. McDaniel, 529 U.S. 473, 484 (2000)), cert. denied, 534 U.S. 941 (2001). We have independently reviewed the record and conclude that Appellant has not made the requisite showing. See Miller-El v. Cockrell, ___ U.S. ___, 2003 WL 431659, at *10 (U.S. Feb. 25, 2003) (No. 01-7662). Accordingly, we deny Appellant's motion for a certificate of appealability and dismiss the appeal. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the court and argument would not aid the decisional process.

DISMISSED

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